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NOTES.

THE LIABILITY OF A VENDOR TO ONE WITH WHOM HE HAS NO CONTRACTUAL RELATION.

The books, in dealing with this problem, state the rules somewhat dogmatically. First, they say that he who supplies an article for resale which is imminently dangerous to life or health, becomes liable in tort to the person injured by its use. Under this classification fall the drug cases in which noxious drugs are sold under harmless labels,[1] or the quantity of the dose is injurious and the manufacturer or the original vendor is the only one who knows its ingredients.[2] On the

[1] *George* v. *Skivington,* L. R. 5 Ex. 1 (1869); *Thomas* v. *Winchester,* 6 N. Y. 397 (1852).

[2] *Blood Balm Co.* v. *Cooper,* 83 Ga. 457 (1889).

other hand, a manufacturer who supplies a machine or appliance without knowledge of any defect is usually not held in tort by a stranger to the contract.[3] If, however, such machine or appliance is placed upon the market with knowledge on the part of the manufacturer of a latent defect which he conceals, or about which he remains reticent when it is his duty to speak, he becomes liable.[4]

To state the rules as given adds to clearness, only until it is attempted to apply them to a new situation.

The question under consideration came before the Supreme Court of the United States recently in the case of *Waters-Pierce Oil Co.* v. *Deselius*.[5] B, the oil company, sold to a retail dealer X, as coal oil, a mixture from a tank containing six thousand six hundred gallons of coal oil, into which by mistake three hundred gallons of gasoline had run. There was evidence to show that while B knew of the defect, it was not thought that sufficient gasoline had flowed into the coal oil tank to materially affect the quality of the latter. X resold to A, who used the fluid to kindle a fire. The mixture proved highly inflammable and an explosion resulted whereby A's wife and children were killed and his house destroyed. There was also proof that B knew of the custom in that locality of kindling fires by the aid of kerosene. In an action by A against B he was allowed to recover, aside from the question of contract, on the ground that B owed a duty to see that the oil supplied by him was not dangerous to the life or limb of the user.

Neither of the rules stated cover this case. Coal oil, unlike a drug, is not imminently dangerous to life or health, so as to invoke the application of the first rule. It yet awaits a decision declaring it inherently harmful. Petroleum lubricating oil has been held not to be imminently dangerous, and proof of negligence in its manufacture and knowledge of any defect has been required in order to impose liability.[6] Nor will the second rule cover this case, for there must be knowledge of the defect to make a manufacturer of an article liable.[7] It will be observed that while the manufacturer knew there had been a slight mixture, he thought, *bona fide,* that there

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[3] *Bragdon* v. *Perkins-Campbell Co.,* 87 Fed. 109 (1898); *Lewis* v. *Terry,* 111 Cal. 45 (1896).

[4] *Schubert* v. *Clark,* 15 L. R. A. (N. S.) 818 (Minn.) (1892).

[5] 29 Supreme Ct. Rep. 270 (1909).

[6] *Standard Oil Co.* v. *Murry,* 119 Fed. 572 (1902).

[7] *Heizer* v. *Kingshand Co.,* 110 Nev. 605 (1892).

was no defect which made the oil highly inflammable. Assuming, however, that this would be sufficient knowledge, the language of the Court [8] goes further when it is said that they do not wish to be confined to the facts before them and to be understood as moulding their conclusions therefrom, but that "under the general principles of law sustained by the authorities already cited, a recovery against the oil company might be justified."

A better statement of the rule should therefore be deduced from the cases, with which, perhaps, the principal case may be consonant.

It would seem that wherever a vendor or manufacturer places upon the market an article which can only be used in a certain way, and if used for that particular purpose or in that peculiar manner, injury results, he should be liable.[9] This is true whether he actually knew of the defect or not. Furthermore, even if he inform the intermediate man, he will not escape liability.[10] If, however, the article is sold not for resale, but for the use of the vendee, and he informs the vendee of the defect, or, if ignorant of the defect, upon inspection it is accepted by the purchaser, the seller should not be answerable to a third party.[11]

A contractor who supplies an appliance to be used by another's servants becomes liable if when that machine is used in the only way it was intended, it proves unfit, to the injury of the servants.[12] And this should be true even though the master has been informed of the defect and gives no notice to his servants.[13]

There is mentioned in the principal case the knowledge by the defendant of the peculiar use, viz.: kindling fires, to which the coal oil was put in the community. If the case were decided solely on the ground that one is bound to see that an illuminating oil is not an improper mixture when put to an inordinate use, we should indeed have a startling proposition. True, when there is knowledge on the part of the original vendor that the article is to be used by certain persons, such as infants, but in the manner in which it was intended,

[8] P. 276.

[9] *Clement* v. *Crosby & Co.*, 111 N. W. (Mich.) 745 (1907).

[10] *Stowell* v. *Standard Oil Co.*, 139 Mich. 18 (1905); *Clement* v. *Crosby & Co.*, 111 N. W. (Mich.) 745 (1907).

[11] *Curtin* v. *Somerset*, 140 Pa. 70 (1891).

[12] *Heaven* v. *Pender*, L. R. 11 Queen's Bench Div. 503 (1883); *Cook* v. *Floating Dry Dock Co.*, 1 Hilt (N. Y.) 436.

[13] *Lechman* v. *Hooper*, 52 N. J. L. 253 (1890).

a false representation will entitle him who uses it to his injury to recover from the original seller.[14] The question of knowledge of its use, however, when the oil is used in a manner which everyone knows is dangerous even when pure, brings little order out of chaos. The question is simply, is the article fit for the particular purpose for which it is paraded on the market.[15]

We shall not dilate upon the problems of proximate cause, which is prolix in its ramifications. The question is briefly whether the interjection of a human agency, the intermediate, seller, is a break in the chain of concentration which will relieve the original vendor. There is a line of cases represented by *Fowles* v. *Briggs*,[16] which say that where there is the intervention of a human agency upon whom rests the obligation of inspection, the chain is broken. Those cases do not arise from a situation where there are a series of events resulting from the placing of an article on the market for resale. When an article or machine is sent out to be passed on by resale, or when it is furnished under contract to be used by another's servants, an injury, resulting from the only use for which it was intended, would seem to be the result of a chain of events so natural as to form one whole and to be the natural and probable consequence of the defendant's act.[17]

The principal case, while not so clear as one might desire on the question of knowledge of the defect in the article sold, at least in the dictum of the courts, places the law where it ought to be and removes much of the confusion which has resulted in making arbitrary distinctions between articles as to which are and which are not inherently dangerous.[18]

Undue Preference Under the English Railway Acts.

In *Holwell Iron Co.* v. *Midland Ry.*,[1] the plaintiff claimed that the defendant company had granted undue preference to three rival companies, each in different localities. As to the first, the defendant did all the terminal service and provided

[14] *Levy* v. *Langridge*, 4 M. & W. 337 (1838).

[15] *Watson* v. *Augusta Brewing Co.*, I L. R. A. 1178 (Ga. 1905).

[16] 116 Mich. 425 (1898).

[17] *Haverly* v. *State Line R. Co.*, 135 Pa. 50.

[18] *Huset* v. *Case Threshing Machine Co.*, 120 Fed. 865 (1903).

[1] L. R. 1 K. B. (1909) 486.